

# Wage theft

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**Wage theft** is the denial of wages or employee benefits rightfully owed to an employee. It can be conducted by employers in various ways, among them failing to pay overtime; violating minimum-wage laws; the misclassification of employees as independent contractors, illegal deductions in pay; forcing employees to work "off the clock", not paying annual leave or holiday entitlements, or simply not paying an employee at all.

According to some studies, wage theft is common in the United States, particularly from low wage legal or undocumented immigrant workers.<sup>[1][2]</sup> The Economic Policy Institute reported in 2014 that survey evidence suggests wage theft costs US workers billions of dollars a year.<sup>[3]</sup> Some rights violated by wage theft have been guaranteed to workers in the United States in the 1938 Fair Labor Standards Act (FLSA).<sup>[4]</sup>

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## Forms

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### Overtime

Wage theft versus other property crimes (robbery, burglary, larceny, and auto theft) in the United States in terms of total annual loss in billions.<sup>[5][6]</sup>

According to the FLSA, unless exempt, employees are entitled to receive overtime pay calculated at least time and one-half times pay for all time worked past forty hours a week. Some exemptions to this rule apply to public service agencies or to employees who meet certain requirements in accordance to their job duties along with a salary of no less than \$455 a week. Despite regulations, there are many employees today who are not paid overtime due them. A 2009 study of workers in the United States found that in 12 occupations more than half of surveyed workers reported being denied overtime pay: child care (90.2 percent denial), stock and office clerks (86 percent), home health care (82.7 percent), beauty/dry cleaning and general repair workers (81.9 percent), car wash workers and parking attendants (77.9 percent), waiters, cafeteria workers and bartenders (77.9 percent), retail salespersons (76.2 percent), janitors and grounds workers (71.2 percent), garment workers (69.9 percent), cooks and dishwashers (67.8 percent), construction workers (66.1 percent) and cashiers (58.8 percent).<sup>[7][8]</sup>

## Minimum wage

In 2009, reform placed the new United States federal minimum wage at \$7.25. Some states have legislation that sets a state minimum wage. In the case an employee is subject to both federal and state minimum wage acts, the employee is entitled to the higher standard of compensation. For tipped employees, the employer is only required to compensate the employee \$2.13 an hour as long as the fixed wage and the tips add up to be at or above the federal minimum wage. Minimum wage is enforced by the Wage and Hour Division (WHD). WHD is generally contacted by 25,000 people a year in regards to concerns and violations of minimum wage pay.<sup>[7][9]</sup> A common form of wage theft for tipped employees is to receive no standard pay (\$2.13 an hour) along with tips.<sup>[8]</sup>

## Misclassification

Misclassification of employees is a violation that leaves employees very vulnerable to other forms of wage theft. Under the FLSA, independent contractors do not receive the same protection as an employee for certain benefits. The difference between the two classifications depends on the permanency of the employment, opportunity for profit and loss, the worker's level of self-employment along with their degree of control. An independent contractor is not entitled to minimum wage, overtime, insurance, protection, or other employee rights. Attempts are sometimes made to define ordinary employees as independent contractors.<sup>[7][8]</sup>

Misclassification in the United States is extensive. In New York state, for example, it was found in a 2007 study that approximately 704,785 workers, or 10.3% of the state's private sector workforce, was misclassified each year. For the industries covered in the study, average unemployment insurance taxable wages underreported due to misclassification was on average \$4.3 billion for the year and unemployment insurance tax underreported in these industries was \$176 million.<sup>[10][11]</sup>

## Illegal deductions

Employees are subject to forms of wage theft through illegal deductions. Trivial to sometimes fabricated violations in the workplace are used to validate deductions. Any deduction that brings an employee to a level of compensation lower than minimum wage is also illegal. In many states, employers are required to issue employees documentation of deductions along with earnings. Failure to issue this documentation is generally prevalent in working places subject to wage theft.<sup>[7][8]</sup>

## Full wage theft

The most blatant form of wage theft is for an employee to not be paid for work done. An employee being asked to work overtime, working through breaks, or being asked to report early and/or leave late without pay is being subjected to wage theft. This is sometimes justified as displacing a paid meal break without guaranteeing meal break time. In the most extreme cases, employees report receiving nothing.<sup>[7][8]</sup> In some cases, the legal status of the workers can enable employers to withhold pay without fear of facing any consequences.<sup>[12]</sup>

## Other forms

Putting the pressure on injured workers to not file for workers' compensation is frequently successful.<sup>[1]</sup> Employees are often confronted with threats of firing or calls to immigration services if they complain or seek redress. Workers are often denied time off or vacation time that they have acquired or denied pay for sick leave or vacation time.

In Australia, another form of wage theft is the failure of employers to pay the mandatory minimum contribution to employee's superannuation fund. Between 2009 and 2013 the Australian Tax Office recovered A\$1.3 billion in unpaid superannuation which is estimated to be only a small portion of total unpaid superannuation.<sup>[13]</sup>

## Incidence

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A 2009 study based on interviews of over 4,000 low wage workers in Chicago, Los Angeles, and New York City found that wage theft from low wage workers in large cities in the United States was severe and widespread. Incidents varied with the type of job and employee. Sixty-eight percent of the surveyed workers experienced at least one pay-related violation in the week prior to the survey. On average the workers in the three cities lost a total of \$2,634 annually

due to workplace violations, out of an average income of \$17,616, which translates into wage theft of fifteen percent of income. Extrapolating from these figures, low wage workers in Chicago, Los Angeles, and New York City lost more than \$2.9 billion due to employment and labor law violations.<sup>[7]</sup> Nationally it is estimated that workers are not paid at least \$19 billion every year in overtime<sup>[14]</sup> and that in the US \$40 billion to \$60 billion in total are lost annually due to all forms of wage theft.<sup>[15]</sup> This compares to national annual losses of \$340 million due to robbery, \$4.1 billion due to burglary, \$5.3 billion due to larceny, and \$3.8 billion due to auto theft in 2012.<sup>[5]</sup>

Workplace Violation Rates  
in the United States (2008)<sup>[7]</sup>

Violation	Percent of All Workers Surveyed	Percent of Workers at Risk of Violation
Minimum wage violation	25.9%	25.9%
Overtime violation	19.1%	76.3%
Off-the-clock violation	16.9%	70.1%
Meal break violation	58.3%	69.5%
Worker was subjected to an illegal pay deduction	4.7%	40.5%
Tips were stolen by employer or supervisor	1.6%	12.2%
<ul style="list-style-type: none"> <li>• Violation occurred in week prior to worker being surveyed</li> <li>• Results based on survey of 4,387 low wage workers</li> </ul>		

## Workers at risk

Studies have found inflated rates of wage theft violations in markets employing women and foreign-born populations. Within the foreign-born population, women were at a much greater risk for wage violations than their male counterparts. Undocumented workers or unauthorized immigrants stood at the highest risk levels. Education, longer tenured employment, and English proficiency proved to be influential factors in employee populations. All three variables reduced the probability of wage theft for the aforementioned demographics. Workplaces where the compensation was paid in one weekly flat rate or in cash saw a higher instance rate of wage theft. Smaller businesses with less than 100 employees also saw a higher instance rate of violations than larger business. In one study, the manufacturing industry, repair services, and private home employment were at the highest risk for violations at the workplace. Home health care, education, and construction saw the lowest levels of wage theft. Restaurants, grocery stores, retail, and warehousing fell around the median.<sup>[7][16]</sup>

## Contemporary examples

In November 2011, Warehouse Workers helped Wal-Mart warehouse employees file their fourth class-action lawsuit against the warehouse companies. Without Wal-Mart being a direct defendant, the argument was made that Wal-Mart has created this culture amongst the companies it works with. The first lawsuit filed was in 2009. The workers argued that poor record keeping and broken promises have led to workers receiving less than minimum wage.

Walmart also denied workers paid vacations that they were promised upon contracting.<sup>[17]</sup> In a report released on November 26, 2011, a Palm Beach County organization, People Engaged in Active Community Efforts (PEACE), sent postcards to Macy's and Bealls executives as a form of protest. The Florida Retail Federation had recently proposed a bill to block a wage theft ordinance in their county, which was intended to create a system that would speed the investigation and processing of wage theft reports.<sup>[18]</sup>

A 2012 study by the Iowa Policy Project calculated that dishonest employers defraud Iowa workers out of about \$600 million annually in wages. State Senator Tony Bisignano, Democrat from Des Moines and Senator William Dotzler, a Democrat from Waterloo, Iowa, proposed a bill to strengthen wage law enforcement on January 28, 2015, "since Iowa's wage theft laws are so weak they are impossible to enforce". The Iowa Association of Business and Industry opposed the bill, saying that resources for enforcement should be the focus instead.<sup>[19]</sup>

A 2017 report by Middlesex University and Trust for London revealed that at least 2 million workers in Britain are losing an estimated £3 billion in unpaid holiday pay and wages per year. It suggested that withholding holiday pay, not paying wages and workers losing a couple of hours money per week are some of the deliberate strategies used by employers to improve their profits.<sup>[20]</sup>

## **Enforcement**

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### **Documentation**

<sup>[21]</sup>In the United States, the Fair Labor Standards Act (FLSA) requires employers to keep detailed records regarding the identity of workers and hours worked for all workers who are protected under federal minimum wage laws.<sup>[22][23]</sup> Most states require that employers also provide each worker with documentation every pay period detailing that worker's hours, wages and deductions.<sup>[24]</sup> As of September 2011 Arkansas, Florida, Louisiana, Mississippi, Nebraska, South Dakota, Tennessee and Virginia did not require this documentation.<sup>[25]</sup> A 2008 survey of wage theft from workers in Illinois, New York, and California found that 57% of low wage workers did not receive this required documentation and that workers who were paid in cash or on a weekly rate were more likely to experience wage theft.<sup>[7]</sup> Anecdotal evidence suggests that tip theft, which is a legally complex issue distinct from wage theft and not necessarily under the control of the same laws governing the payment of wages,<sup>[26]</sup> may also be common in instances where employer record keeping does not comply with the law.<sup>[27]</sup>

### **Penalties and sanctions**

When the Wage and Hour Division (WHD) receives reports of violations, it works to ensure that employers change their work practices and pay back missed wages to the employees. Willful violators can face fines up to \$10,000 upon their first conviction with imprisonment resulting from future convictions. In regards to child labor laws, an employer can face a fine of up to \$11,000 per minor. In 2012 the Wage and Hour Division collected \$280 million in back

wages for 308,000 workers.<sup>[28]</sup> As of 2014, there are 1,100 federal investigators for 135 million workers in more than 7 million businesses.<sup>[29]</sup> The ratio of labor enforcement agents to U.S. workers has decreased tenfold since the inception of the FLSA from one for every 11,000 workers in 1941<sup>[30]</sup> to one for every 123,000 workers in 2014.<sup>[29]</sup>

In February 2010 Miami-Dade County, Florida became the first jurisdiction in America to ban wage theft with an ordinance passed unanimously by the county commission. Prior to the ordinance, wage theft was called "the crime wave that almost no one talks about".<sup>[31]</sup>

## See also

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- Wage gap
- Economic discrimination
- Wage
- Family wage
- Living wage
- Wage slavery
- Employment discrimination
- Exploitation of labour
- Working poor
- Social inequality
- Maximum wage
- Guaranteed minimum income
- Entitlement
- Welfare
- Wages and salaries
- Income distribution
- List of countries by average wage
- Employment-to-population ratio
- List of countries by employment rate
- List of countries by GDP (PPP) per capita

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## External links

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- "Houston, We Have a Wage Theft Problem" (<http://stopwagetheft.files.wordpress.com/2012/05/2012-houston-wage-theft-report.pdf>), Full report by Houston Interfaith Worker Justice Center
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